

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

TIMOTHY EDDINGTON,

Plaintiff,

v.

**CIVIL ACTION NO. 2:11-CV-25
(BAILEY)**

H. BOYLES, HSA, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel. By Local Rule, this action was referred to Magistrate Judge Joel for submission of a report and a recommendation (“R&R”). Magistrate Judge Joel filed his R&R on July 11, 2011 [Doc. 18]. In that filing, the magistrate judge recommends that this Court deny the plaintiff’s Motions for Leave to Proceed *In Forma Pauperis* [Docs. 2 & 6] and to dismiss this case without prejudice pursuant to 28 U.S.C. § 1915(g).

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); ***Snyder v.***

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. The docket reflects that service was accepted on July 14, 2011. See Doc. 22. To date, no objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

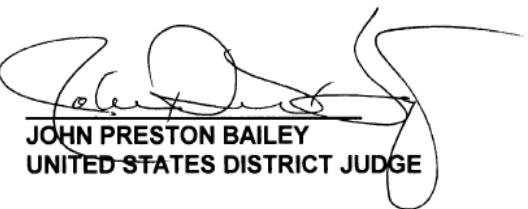
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 18**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES** the plaintiff's Motions for Leave to Proceed *In Forma Pauperis* [**Docs. 2 & 6**] and **DISMISSES WITHOUT PREJUDICE** the plaintiff's Complaint [**Doc. 1**] pursuant to 28 U.S.C. § 1915(g). This Court notes that the proper procedure is for the district court to dismiss the Complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the three strikes provision of § 1915. The prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status; he must pay the filing fee at the time he initiates suit." *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). For these reasons, the plaintiff's Motion for Extension to pay the filing fee [**Doc. 20**] must also be **DENIED**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. Accordingly, the Clerk is directed to enter a separate judgment in favor of the defendants.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and

to mail a copy to the *pro se* plaintiff.

DATED: August 8, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE